

**STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD**



SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 521,

Charging Party,

v.

COUNTY OF FRESNO,

Respondent.

Case No. SA-CE-673-M

PERB Decision No. 2352-M

January 29, 2014

Appearances: Weinberg, Roger & Rosenfeld by Kerianne R. Steele, Attorney, for Service Employees International Union, Local 521; Catherine E. Basham, Senior Deputy County Counsel, for County of Fresno.

Before Martinez, Chair; Huguenin and Winslow, Members.

DECISION

MARTINEZ, Chair: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by the Service Employees International Union, Local 521 (SEIU) to the proposed decision of a PERB administrative law judge (ALJ). The complaint, and underlying charge, alleges that in June 2010, the County of Fresno (County) changed a policy by amending a personnel rule concerning mandatory employee furloughs to include Bargaining Units 3, 4 and 36 without negotiating to agreement over the decision and/or effects of the policy change. By this conduct, it is alleged that the County failed and refused to meet and confer in good faith in violation of Government Code section 3505 of the Meyers-Milias Brown Act.¹ At the formal hearing, the ALJ granted SEIU's motion to amend the complaint to allege that by this conduct, the County repudiated the Compensation, Reopener and Full Understanding provisions in the parties' memorandum of understanding applicable to

¹ The MMBA is codified at Government Code section 3500 et seq.

Bargaining Units 3, 4 and 36. It is also alleged that by this conduct, the County interfered with the rights of bargaining unit employees to be represented by SEIU in violation of section 3506 and denied SEIU the right to represent unit members in violation of section 3503.

The formal hearing was held on October 17, 2011. On January 5, 2012, the case was submitted for decision following receipt of post-hearing briefs. The ALJ issued the proposed decision on June 22, 2012. After a request for extension of time was granted, on July 30, 2012, SEIU filed exceptions to the proposed decision and a request for oral argument. On August 20, 2012, the County filed its response.

On December 19, 2013, SEIU sent a letter to the Board, which states, in pertinent part:

On behalf of our client, we hereby withdraw the SEIU's Exceptions to the Administrative Law Judge's Proposed Decision. We also hereby withdraw the underlying unfair practice charge without prejudice.

By letter from the PERB Appeals Assistant dated December 30, 2013, the Board sought clarification from the parties regarding the possible withdrawal of this case. The letter states:

Having received no objection from the respondent to the withdrawal of the unfair practice charge, we will assume that it is the parties' mutual intention to request that the complaint and underlying unfair practice charge be dismissed and the proposed decision of the administrative law judge be vacated, and will act on that request forthwith. If that is not the parties' mutual intention, please so advise by Friday, January 10, 2014, providing your respective positions.

As stated in its response letter dated January 10, 2014, the County does not object to SEIU's withdrawal of its exceptions to the proposed decision, but does object to its request to withdraw the underlying unfair practice charge without prejudice. The County believes that the proposed decision of the ALJ is well-reasoned. As explained by the County, "[i]t would be an unnecessary waste of the time and resources of both the parties and this Board if SEIU Local 521 were to relitigate this issue if furlough of employees in these bargaining units should

become necessary at some point in the future.” Accordingly, the County requests that the Board exercise its discretion to either:

1. Deny the request to withdraw the unfair practice charge and deem the proposed decision of ALJ Bologna final; or
2. Grant the request to withdraw the unfair practice charge but make such withdrawal with prejudice.

(Underlying in the original.)

The Board has the discretion to grant or deny requests to withdraw and dismiss cases pending before the Board itself. (PERB Reg. 32320, subd. (a)(2) [“The Board itself may: . . . take such other action as it considers proper.”];² *State of California (Department of Personnel Administration)* (2010) PERB Decision No. 2152-S; *Grossmont-Cuyamaca Community College District* (2009) PERB Order No. Ad-380; *Oakland Unified School District* (1988) PERB Order No. Ad-171a; *ABC Unified School District* (1991) PERB Decision No. 831b.)

SEIU requests withdrawal of its exceptions. The County interposes no objection. The Board has a longstanding policy favoring voluntary settlement of disputes. (*Dry Creek Elementary School District* (1980) PERB Order No. Ad-81.) Given that both sides agree, the Board finds that withdrawal of the exceptions is in the best interests of the parties and consistent with the purposes of the MMBA to promote harmonious labor relations. Moreover, absent special circumstances, exceptions may be withdrawn unilaterally by request of the party who filed them. Assuming no exceptions were filed by the opposing side, by operation of PERB Regulation 32305, subdivision (a), upon granting a request to withdraw exceptions, the underlying proposed decision becomes final. Such a withdrawal serves the interests of the parties, bringing finality and closure to a case that has been fully litigated by leaving the ALJ’s decision in place.

² PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

Here, the request for withdrawal goes farther, reaching not only the exceptions but the unfair practice charge itself. This is where SEIU and the County part ways. SEIU requests withdrawal of the unfair practice charge without prejudice. The County has no objection to withdrawing the unfair practice charge so long as it is withdrawn with prejudice. We agree with the County and grant SEIU's request to withdraw its unfair practice charge but not "without prejudice."

Although an unfair practice complaint is based on an unfair practice charge, issuance of a complaint by the Office of the General Counsel signifies that the dispute is not only one that charging party wishes to pursue but one that PERB has determined *should* be pursued. An informal settlement conference is held with a Board agent serving as a mediator/facilitator to assist the parties in resolving the dispute. From there, if the case is not settled, it goes to an evidentiary hearing. Litigating a case often entails the retention of counsel, the preparation of witnesses and documentary evidence, the drafting of briefs and all the additional time, resources and effort involved in participating in an evidentiary hearing. The hearing is conducted by a PERB ALJ who then issues a proposed decision resolving the disputed issues.

At this point in the process, permitting SEIU, the non-prevailing party, to rewind the clock and un-do the litigation, and re-file a charge on the same issues if it so chooses at a later date, by granting its request to simply withdraw the unfair practice charge without prejudice serves very little, if any, purpose. A non-prevailing party has the right to appeal an unfavorable decision but does not have the right to act as if the case was never litigated and did not result in a decision on the merits. Without at least the prevailing party's consent, as in cases that are disposed of via a global settlement of outstanding issues between the parties, requests such as SEIU's to withdraw a charge that has been fully litigated without prejudice do not warrant the Board's approval.

With respect for the administrative adjudication process, and recognition of the need for finality with respect to the disposition of fully litigated issues, the Board grants SEIU's request to withdraw its unfair practice charge, but for all the reasons provided above, we do so with prejudice.

ORDER

The request by the Service Employees International Union, Local 521 in Case No. SA-CE-673-M is hereby GRANTED in part. The exceptions to the proposed decision and the request for oral argument are deemed withdrawn. The unfair practice charge is DISMISSED WITH PREJUDICE. The complaint is dismissed and the proposed decision is hereby vacated.

Members Huguenin and Winslow joined in this Decision.